IP 05-0002-CR 1 B/F US v Lucas
Judge Sarah Evans Barker Signed on 5/27/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
LUCAS, CHRISTOPHER,	)	CAUSE NO. IP05-0002-CR-01-B/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	1:05-02-CR-B/F
CHRISTOPHER LUCAS, Defendant.	)	

ENTRY DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Defendant Christopher Lucas ("Lucas") is charged in three counts: Count 1 – the possession with intent to distribute heroin – and Counts 2 and 3 – the knowing possession of firearms in furtherance of a drug trafficking crime, in violation of, respectively, 21 U.S.C. § 841 (a)(1) and 18 U.S.C. §§ 924 (c)(1)(A) and (c)(1)(B)(I). The charges arise from evidence – drugs, firearms and ammunition – seized as a result of a no-knock search warrant execution on Defendant's residence on June 10, 2004.

This matter comes before the Court on Defendant's Motion to Suppress the seized evidence on the grounds that (1) the affidavit in support of the warrant lacked probable cause on its face, and (2) the good-faith exception to a defective warrant is inapplicable. Because the parties have stipulated that no factual dispute requires resolution by the Court, we have dispensed with a hearing and shall decide the issues on the submitted record. See United States v. Sophie, 900 F.2d 1064, 1071 (7th Cir. 1990) (holding that an evidentiary hearing is necessary only if the party requesting the hearing raises a significant, disputed factual issue).

Factual Background

On June 10, 2004, officers from the Marion County (Indiana) Sheriff's Department

executed a search warrant at the residence of Defendant Lucas at 3805 Wittfield Street in Indianapolis and seized numerous items. Defendant seeks to exclude from use as evidence in his trial those items, to wit:

> 23.8 grams of heroin, 5.25 grams of marijuana, drug paraphernalia including scales and plastic baggies with drug residue, protective body armor, three assault type rifles, two pistols, two revolvers, four semi-automatic handguns, one high-powered rifle, one shotgun and an estimated 1500 to 2000 rounds of ammunition.

Def.'s Ex. B, Search Warrant Return.

The search had been authorized two days earlier, on June 8, 2004, when Indianapolis Police Department Detective Leo George ("Det. George") presented his probable cause affidavit to the Honorable William Young, Judge of the Marion Superior Court, Criminal Division, who issued a no-knock search warrant for 3805 Wittfield Street. The warrant authorized a search for illegal narcotics and controlled substances, paraphernalia used to manufacture and distribute illegal substances, paper and electronic records relating to the sale of illegal substances, and weapons and firearms used to protect illegal narcotics and currency relating to sales of illegal substances. Def.'s Ex. A, Search Warrant.

The following events as outlined in the Affidavit occurred prior to the application for the warrant and provide the factual basis for issuance of the search warrant. See Def.'s Ex. C, "Affidavit for Probable Cause."

Det. George first recounted an event that occurred at 3805 Wittfield three (3) years prior, on April 16, 2001, when he was conducting a "death investigation" at that address during which he performed CPR on an unconscious child. While on the premises, he observed a set of Kevlar body armor on the sofa, various firearms in plain view, and a "metal floor safe." The family members of the unconscious boy who were present, as Det. George related, included Ms. Terri

Chatfield and her "live-in boyfriend, Mr. Christopher Lucas." Det. George further stated that "through his experience and training as a law enforcement officer, [he] suspected that body armor and weapon [sic] were used by individuals who were involved in illegal narcotics activity." As a result, Det. George began periodic surveillance of 3805 Wittfield, which alerted him to suspicious "vehicular traffic."

Three years passed, and on May 13, 2004, the Sheriff's Department undertook a narcotics investigation of 3805 Wittfield (also referred to as "3805 N. Wittfield" throughout the affidavit). Det. George related that, in the course of his road patrol in the Beat 17 area of Marion County, he observed "suspicious activities at the residence," which included "a large amount of vehicular traffic."

Soon thereafter, Det. George and a law enforcement associate "conducted a trash pull investigation of 3805 Wittfield" on two separate occasions, May 17, 2004 and June 7, 2004, on each of which they removed from the curb-side trash certain items which they later photographed. During the May 17, 2004 "trash pull," Det. George discovered "multiple clear plastic baggies" which contained a "powdery residue." Suspecting that the plastic baggies had been used for illegal narcotics, he sent them to the Marion County forensics science laboratory, where they tested positive for heroin residue. During the June 7, 2004 "trash pull," the following items were discovered: "several clear plastic baggies with the corners missing," "pieces of mail addressed to Christopher Lucas and Terri Chatfield," and an "empty box for a Tanita brand digital scale." Again, the baggies tested positive for heroin. Det. George stated that based on his experience and training as a law enforcement officer, he "recognized that small digital scales are commonly used in the weighing of narcotics for distribution and sales."

Det. George also discovered what he believed to be various aliases for Lucas[1] and determined that there had been a prior arrest for battery and disorderly conduct in Chicago, Illinois under the name "Christopher Lucas." Det. George stated that two (2) years earlier, the Indianapolis police had been alerted to a domestic disturbance allegedly involving Chatfield and Lucas; he had also searched for and found a criminal record for Chatfield.

Det. George concluded, stating that "based on the foregoing circumstances, [he] believe[d] there are illegal substances located at 3805 Wittfield" and, in light of this information, he requested a "no knock search warrant."

Judge Young issued the requested warrant on June 8, 2004, authorizing law enforcement officials to search for illegal narcotics and controlled substances at 3805 Wittfield, Indianapolis. The warrant was executed, the residence searched, and the illegal narcotics and firearms seized.

Legal Analysis

Our task is to determine whether the facts as alleged in Det. George's affidavit provided a substantial basis on which to believe that contraband or evidence of criminality would be found on or about June 8, 2004 at the 3805 Wittfield Street address. In the absence of probable cause, a warrant may not legally issue. A search of the Lucas residence, in the absence of a warrant, may have violated the Fourth Amendment which prohibits "unreasonable searches and seizures" and provides that "no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." Evidence secured through an illegal search and seizure may be excluded from the prosecution's case-in-chief, if the Court grants a motion to suppress the evidence.

[1]As stated in the affidavit for probable cause, the various names included "Lucas Christopher, Kevin Lucas Christopher and Kevin Christopher."

Probable Cause

Probable cause is established by "facts sufficient to induce a reasonably prudent person to believe that a search ... will uncover evidence of a crime." United States v. Muhammad, 928 F.2d 1461, 1464-65 (7th Cir. 1991) (quoting United States v. McNeese, 901 F.2d 585, 592 (7th Cir. 1990)) (internal quotations omitted). The task of the issuing judge is to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, ... there is a fair probability that contraband or evidence of a crime will be found in a particular place. Illinois v. Gates, 462 U.S. 213, 238 (1983). In addition, prior cases recognize that, "in issuing a search warrant, a magistrate is entitled to draw reasonable inferences about where the evidence is likely to be kept, based on the nature of the evidence and the type of offense, and that in the case of drug dealers, evidence is likely to be found where the dealers live." United States v. McClellan, 165 F.3d 535, 546 (7th Cir. 1999).

We give an issuing judge's determination of probable cause considerable weight, only overruling the issuing judge's decision when the supporting affidavit, read as a whole, in a realistic and common sense manner, does not allege specific facts and circumstances from which the judge could reasonably have concluded that the items sought to be seized were associated with the crime and located in the place indicated. United States v. Spry, 190 F.3d 829, 835 (7th Cir. 1999). In doubtful cases, the issue is properly resolved in favor of upholding the warrant. Id.; U.S. v. Quintanilla, 218 F.3d 674, 677 (7th Cir. 2000).

Lucas contends that Det. George's affidavit does not establish probable cause for the search in two respects: (1) it lacks sufficient factual details concerning Det. George's experience and training as a law enforcement officer to support his conclusions regarding illegal drug activity; and (2) the facts laid out in the affidavit are "remarkably stale."

First, argues Lucas, the affidavit lacks the requisite indicia of reliability because it is based on facts and information sworn to by a detective whose expertise is not explicitly detailed in the affidavit, and thus unknown to the issuing judge. For example, without knowing either the number of narcotics cases Det. George had previously investigated or whether he had any special training or education in narcotics investigations, his ability to reach conclusions concerning the use of body armor and weapons in illegal drug activity is questionable. We find this criticism unpersuasive because of Judge Young's obvious opportunity to assess the affiant's experience in light of his advanced rank as a Detective Sergeant and general familiarity with standard police training requirements. The judge properly would infer on this basis the affiant's experience and qualifications to form opinions regarding suspicious criminal activity. Gov't Br. at 5. The issuing judge is called upon to make a practical, common sense decision whether there is probable cause to believe there would be contraband discovered in the search, based on the totality of the circumstances. We credit Judge Young with having drawn this altogether reasonable inference. See Illinois v. Gates, 462 U.S. at 238.

Moreover, the affiant also described the launching of a narcotics investigation on May 13, 2004, by police officials in Indianapolis, an undertaking of which Det. George was an integral part, having thereafter participated in the two "trash pulls" of May 17 and June 7, 2004 and having received the results of the laboratory testing on the baggies recovered from the trash. Concerning the reliability of sworn statements in an affidavit by federal law enforcement officials, the Seventh Circuit has noted that "[c]learly, officers of the United States assigned to such dangerous and complex work as drug enforcement are not put in the field without initially undergoing proper and extensive training." United States v. Griffin, 827 F.2d 1108, 1112 (7th Cir. 1987). It is no stretch whatsoever to extend this pronouncement to state law enforcement

officials who also perform such duties as those performed by Det. George in June 2004 in seeking permission from Judge Young to conduct the search. See also, U.S. v. McNeal 82 F.Supp.2d 945, 951 (S.D. Ind. 2000) (noting that a magistrate is entitled to take into account the experiences of trained officers whose affidavits explain the significance of specific types of information); United States v. Lamon, 930 F.2d 1183, 1189 (7th Cir. 1991) (finding a substantial basis for probable cause determination based in part on a detective's experience that drug dealers often hide money, drugs, and other incriminating evidence at their permanent residences).

Defendant Lucas next objects to the alleged staleness of the information set out in the affidavit which refers to events in 2001, when Det. George said that he observed the Kevlar body armor, firearms and floor safe. In determining whether information providing the factual basis for a search warrant is in fact stale and thus unsuitable for establishing probable cause, the Seventh Circuit has held that the age of the information is only one factor to be considered "and if other factors indicate that the information is reliable, the magistrate should not hesitate to issue the warrant." United States v. Newsom, 402 F.3d 780, 783 (7th Cir. 2005). The so-called "stale" information at issue here, i.e., the sighting of the body armor, guns and safe in 2001, is clearly not the only information presented to the issuing judge. The judge was also advised of the recent investigative efforts including the "trash pulls" and the subsequent forensic testing. In addition, the occupants of the residence in 2001 were the same people still living there at the time of the planned search. The age of the first citing of drug paraphernalia does not diminish the reliability of the other information referenced in the affidavit. Furthermore, "where the affidavit recites facts indicating ongoing, continuous criminal activity, the passage of time becomes less critical." Lamon, 930 F.2d at 1188 (citing dicta in United States v. Shomo, 786 F.2d 981, 984 (10th Cir.1986)). Det. George stated in his affidavit that "since April 2001, [he] has continued to do

periodic survailence [sic] of 3805 N. Wittfield and has observed for the suspicious vehicular traffic to continue." While admittedly lacking what would have been helpful specifics regarding his surveillance activities thereby assisting our understanding of "ongoing, continuous criminal activity," this is not, in any event, "stand alone" information in terms of establishing probable cause. Affiant does offer a specific instance, although undated, of having observed what he characterized as suspiciously heavy traffic at the residence while he was on road patrol duty. Aff. p. 1.

Even if Det. George's observations in 2001 at the residence are deemed "stale," other courts have upheld the validity of search warrants based on evidence of personal drug use, or drug packaging and distribution, that has been recovered from the trash outside of the premises which have been searched. See U.S. v. Redmon, 138 F.3d 1109, 1111 (7th Cir. 1998) (upholding the validity of a search warrant based on information from a confidential informant and items pulled from the defendant's garbage, e.g. clear plastic bags, a glass vial, and rubber and tape packages, that field-tested positive for cocaine); U.S. v. Briscoe, 317 F.3d 906 (8th Cir. 2003) (holding that marijuana seeds and stems found in garbage outside defendant's residence were 'stand-alone' evidence to establish probable cause to support search warrant for defendant's residence); U.S. v. Lawrence, 308 F.3d 623, 627 (6th Cir. 2002) (upholding the validity of a search warrant based on statements by a confidential informant and plastic bags containing cocaine residue obtained from defendant's trash, even if the statements were excluded from consideration).

Accordingly, the allegedly "stale" information obtained by Det. George was consistent with and corroborated by the "fresh" evidence of contraband and items relating to drug activity recovered from the trash in front of 3805 Wittfield. The papers in the trash linked Lucas to the residence and the surveillance led the experienced law enforcement officer to suspect criminal

activity at the same address. Thus, in our view, the affidavit presented to Judge Young provided him with sufficient, reliable, factual information allowing him reasonably to conclude that there was a likelihood that contraband or evidence of criminality was present at 3805 Wittfield St. in Indianapolis on or about June 8, 2004. Defendant's motion to suppress the evidence thus cannot succeed on the basis of staleness.

Good Faith Exception to the Exclusionary Rule

Having determined that the probable cause affidavit was not deficient on its face, we do not address Defendant's "good-faith doctrine" argument, under U. S.v. Leon, 468 U.S. 897, 923 (1984).

Conclusion

Accordingly, for the reasons outlined above, we DENY Defendant's Motion to Suppress the Evidence. IT IS SO ORDERED.

Date: _____

_____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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